

STATE OF HAWAII  
DEPARTMENT OF EDUCATION  
OFFICE OF SCHOOL FACILITIES AND SUPPORT SERVICES  
Honolulu, Hawaii 96813

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Oahu

Lease of Federal Property for Mokapu Elementary School at Marine  
Corp Base Hawaii, Kaneohe, Oahu; Lease No. N6247811RP00024, Tax  
Map Key: (1)4-4-009:007

APPLICANT AGENCY:

Department of Education (DOE)

LANDOWNER:

The United States of America, acting by and through the  
Department of the Navy, hereinafter called the "Navy"

LEGAL REFERENCE:

Section 171-30, HRS, as amended

LOCATION:

Department of Navy controlled lands at 1193 Mokapu Road, Kailua,  
Hawaii 96734

AREA:

14.235 acres approximately

ZONING:

State Land Use District: Urban  
City & County of Honolulu LUO: F-1

CURRENT USE:

Mokapu Elementary School.

CONSIDERATION:

None. In lieu of cash rent, the Navy agrees to accept in-kind  
consideration in the form of intangible benefits and essential  
services.

PURPOSE:

Continued operation and maintenance of public school facilities.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This action before the Board involves a gratis lease renewal that does not require the use of State funds. Therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements.

APPLICANT REQUIREMENTS:

None.

REMARKS:

The previous lease between the State and the Navy for the use of the subject property within the base for the Mokapu Elementary School expired in 2009. Thereafter, the Navy acknowledged the State as a holdover lessee until the new lease is completed.

The Navy submitted a succeeding lease for Mokapu Elementary School to the Department of Land and Natural Resources (DLNR) on April 15, 2010. The lease was then transmitted to the DOE on April 27, 2010 for "follow-up action".

The DOE reviewed the draft lease and made some suggestions which were incorporated into a revised draft. The Deputy Attorney General assigned to the DOE reviewed the draft lease as did staff of the DOE's Office of Human Resources. A DOE letter of concurrence for the draft lease was sent to the Navy on February 25, 2011.

The Navy approved the final draft of the lease, with an additional condition, and sent it to DLNR on April 26, 2011. The lease shall be for twenty-five (25) years beginning on the date of lease execution. DOE does not have any objection to the latest draft attached as Exhibit A.

The Department of Education (DOE) is requesting the Board of Land and Natural Resources (BLNR) approve the renewal of the lease for the campus of Mokapu Elementary School at Marine Corps Base Hawaii.

RECOMMENDATION: That the Board:

1. Authorize the Chairperson execute the lease for the subject lands under the terms and conditions cited in the lease and further subject to the following:

for Mokapu Elementary School

- A. Review and approval by the Department of the Attorney General; and
- B. Such other terms and conditions as prescribed by the Chairperson to best serve the interest of the State.

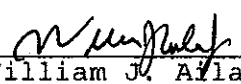
Respectfully Submitted,



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Kathryn S. Matayoshi  
Superintendent

APPROVED FOR SUBMITTAL:



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William J. Aila Jr., Chairperson

DEPARTMENT OF THE NAVY  
GENERAL PURPOSE OUTLEASE

All correspondence in connection with  
this contract should reference  
Contract No. N6247811RP00024  
Marine Corps Base Hawaii  
Activity/UIC: M00318  
MOKAPU ELEMENTARY SCHOOL

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Contract No. N6247811RP00024  
Supersedes: N6274284RP00034  
MOKAPU ELEMENTARY SCHOOL  
Marine Corps Base Hawaii  
Activity/UIC: M00318

**DEPARTMENT OF THE NAVY  
GENERAL PURPOSE OUTLEASE**

**LEASE  
BETWEEN  
THE UNITED STATES OF AMERICA  
AND  
THE STATE OF HAWAII**

THIS LEASE, effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between THE UNITED STATES OF AMERICA, acting by and through the Department of the Navy, hereinafter called the "Government" and THE STATE OF HAWAII, acting by and through its Department of Land and Natural Resources, hereinafter referred to as "Lessee".

**WITNESSETH:**

**WHEREAS**, the Leased Premises covered by this Lease is under the control of the Department of the Navy, and the Commanding Officer, Marine Corps Base Hawaii, Kaneohe Bay, Hawaii (the latter is hereinafter referred to at times as "Installation");

**WHEREAS**, the Leased Premises are not excess property as defined in section 3 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. §102); and

**WHEREAS**, the Secretary of the Navy, pursuant to the provisions of 10 U.S.C. §2667, has determined that the proposed use of the Leased Premises, subject to the terms and conditions of this Lease will promote the national defense or be in the public interest.

**NOW THEREFORE**, in consideration of the terms, covenants, and conditions hereinafter set forth, Government and Lessee hereby agree as follows:

**1. LEASED PREMISES.**

A. Government does hereby lease, rent, and demise to Lessee, and Lessee does hereby rent from the Government the Leased Premises, described as the Mokapu Elementary School, situated at 1193 Mokapu Road, Kailua, Hawaii 96734, containing approximately 14.2 acres of land identified as Parcel 1, together with supporting rights-of-way for various utilities, described in **EXHIBIT A** and shown on **EXHIBITS B, C, and D**, attached hereto and made parts hereof, with all rights of access to the Leased Premises for ingress, egress, parking, and utilities as provided in accordance with Paragraphs 10 and 28 below. The Government and the Lessee acknowledge that the Lessee owns all improvements situated on the Leased Premises.

B. Property Condition. The Lessee understands that the Leased Premises are offered and leased on an "as is, where is" basis, without representation or warranty on the part of the Government as to the suitability for any purpose. The Lessee has inspected the property, knows the extent and condition of said property, and acknowledges receipt of the Leased Premises as is, where is, from the Government.

C. The Government is under no obligation to make any repair, alteration, or addition to the Leased Premises, or to perform any act of maintenance or upkeep thereto.

2. **TERM.** The term of this Lease shall be for a period of twenty-five (25) years beginning on the date executed above, and ending on \_\_\_\_\_20\_\_\_\_, unless sooner terminated in accordance with the provisions of Paragraph 14, Termination.

### 3. **CONSIDERATION.**

The annual fair market rental value of the Leased Premises is \$53,950.00. In lieu of cash rent, the Government agrees to accept in-kind consideration in the form of various intangible benefits and essential services that include on-base elementary level education at a location that is easily accessible for dependents living on base; on-base facilities including classrooms, cafeteria, and playground for use by the students; access to school facilities during non-school hours for military members and dependents to hold meetings and other community gatherings; before and after supervised school program providing supervised care for military children; and referral services. Such in-kind consideration shall also include the right of each elementary-age child of a military family residing on the Installation to enroll as a student at Mokapu Elementary School, and shall enable such child to attend classes that are appropriate for that child based on the child's age, current class level, and prior educational progress. The right of each such child to enroll in an on-Installation school operated by the Lessee shall include the right to enroll at the school during the course of an ongoing school year, without regard to the date the child or the child's family began residing on the Installation.

### 4. **USE OF LEASED PREMISES.**

A. **Purpose.** The purpose for which the Leased Premises may be used, in the absence of prior written approval by the Government for any other use, is the following: continued operation and maintenance of public school facilities. Such use shall include any incidental uses that arise out of, or are related to, the education of children; provided, however, that the operation of all school facilities shall be conducted without regard to race, national origin, religion, sex, or color. Any such form of segregation or discrimination in the operation of any said facilities shall be deemed sufficient grounds upon which to effect termination of the Lease. The Lessee understands and acknowledges that this Lease is not and does not constitute a commitment by the Government with regard to any fee title conveyance of the Leased Premises, in whole or in part, to Lessee or any agency or instrumentality thereof, or to any sublessee.

B. **Historical/Archeological Property.** The Government is cognizant that the Lessee may renovate and upgrade the facilities that it owns on the Leased Premises. However, Lessee shall not undertake any activity that may affect a historic or archeological property, including excavation, construction, alteration or repairs of the Leased Premises, without the approval of the Government and compliance with Section 106 of the National Historic Preservation Act, 16 U.S.C. §470, and the Archeological Resources Protection Act of 1979, 16 U.S.C. §470 aa. Buried cultural materials may be present on the Leased Premises. If such materials are encountered, Lessee shall stop work immediately and notify the Government. The Government has no knowledge of any historical or archeological property on the Leased Premises; in the event that it becomes aware of such property, the Government will immediately notify the Lessee.

### 5. **ASSIGNMENT AND SUBLEASING.**

A. Lessee shall not transfer, assign, or sublet this Lease or any interest therein or any property on the Leased Premises, or grant any interest, privilege or license whatsoever in connection with this Lease without the prior written consent of Government. Such consent shall not be unreasonably withheld or delayed.

B. Any sublease granted by Lessee shall contain a copy of this Lease as an attachment and be consistent with the terms and conditions of this Lease and shall terminate immediately upon the expiration or any earlier termination of this Lease, without any liability on the part of the Government to Lessee or any sublessee, except as specifically provided in this Lease. No sublease shall relieve Lessee of any of its

obligations hereunder. Under any sublease made with or without consent of the Government, the sublessee shall be deemed to have assumed all of the obligations of the Lessee under this Lease. Every sublease shall be subject to, and shall be deemed to contain, the Environmental Protection provisions set forth in Paragraph 13 below.

C. Lessee shall submit to the Government for its prior written consent, a copy of each sublease Lessee proposes to execute. Such consent may include a requirement that Lessee renegotiate the sublease to conform to the provisions of this Lease. Consent to the sublease shall not be taken or construed to diminish or enlarge any of the rights or obligations of either of the parties to this Lease. Should a conflict arise between the provisions of this Lease and a provision of the sublease, the provisions of this Lease shall take precedence. Upon its execution, a copy of each sublease shall be immediately furnished to the Government.

#### **6. PREMISES PROVIDED "AS IS".**

The Leased Premises shall be delivered to the Lessee on an "As Is, Where Is" basis, and, as such, Government makes no warranty relative to the Leased Premises as to its usability generally or as to its fitness for any particular purpose.

**7. ENVIRONMENTAL CONDITION OF PROPERTY.** An Environmental Condition of Property (ECP) is attached to this Lease as **EXHIBIT E** and by reference hereby made a part hereof. The ECP sets forth the existing environmental conditions of the Leased Premises as represented by a survey conducted by the Government and the basis for the Government's determination that the Leased Premises are suitable for leasing. Lessee and each sublessee are hereby made aware of the notifications contained in the ECP and shall comply with all restrictions set forth therein.

#### **8. ALTERATIONS/RESTORATION.**

A. Lessee, or any sublessee, shall not construct or make any substantial construction, alterations, additions, modifications, excavations, betterments, or improvements to, installations upon, or otherwise modify or alter the Leased Premises in any way (hereinafter called "work"), including those that may adversely affect human health or the environment, without the prior written consent of the Government. Such consent shall not be unreasonably withheld, conditioned or delayed. Further, such consent may involve a requirement to provide the Government with a performance and payment bond satisfactory to it in all respects and other requirements deemed necessary to protect the interests of the Government. For such work in the proximity of any known Installation Restoration Program (IRP) site, such consent may also include a requirement for the written approval of the Government's Remedial Project Manager in addition to approval by the Real Estate Contracting Officer. All such work shall be done in a workmanlike manner and be subject to the requirements of all state and local building codes. Lessee shall provide Government with prior written notification and a full description of the proposed work including any other information on the proposed work on the Leased Premises requested by Government. Except as provided herein or provided in the Government's written approval, all such approved work affixed to the Leased Premises shall, upon expiration or termination of the Lease, become the property of the Government, to the extent abandoned in accordance with the conditions herein below provided.

B. Upon termination of the Lease or by revocation or surrender of any sublease, Lessee or sublessee shall either:

(1) Promptly remove all alterations, additions, betterments, and improvements made or installed and restore the Leased Premises, to the same or as good condition as existed on the date of execution of this Lease; subject to reasonable wear and tear and loss or damages for which the Lessee is not responsible hereunder; or

(2) Abandon such work in place, at which time title to said work shall vest in Government; provided, however, that such abandonment shall be subject to the Government's prior written consent and further provided, in either event, all personal property and trade fixtures of Lessee or any third party shall

be removed and Lessee or such third party shall repair any damages to the Leased Premises resulting from such removal.

#### **9. ACCESS BY GOVERNMENT.**

A. In addition to access required under Paragraph 13 below, at all reasonable times throughout the term of this Lease, the Government shall be allowed access to the Leased Premises for any purpose upon reasonable notice to Lessee or sublessee. The Government normally will give Lessee or any sublessee 24-hour prior notice of its intention to enter the Leased Premises, unless it reasonably determines the entry is an emergency required for safety, health, environmental, operations or security purposes, in which event no notice will be given. If Government entry will occur during normal school business hours, Government personnel and/or its contractors may be required by the Lessee to check in at the office of the Leased Premises and may be required to be escorted by school personnel while on the Leased Premises.

B. The Lessee or sublessee shall have no claim on account of any entries against the Government or any Government officer, agent, employee or contractor. All necessary keys to the building and Leased Premises occupied by the Lessee or any sublessee shall be made available to the Government upon request.

#### **10. UTILITIES AND SERVICES.**

A. Provision to the Leased Premises of any utilities such as gas, water, steam, sewer, telephone, trash removal, etc., shall be the responsibility of the Lessee and any sublessee. In the event that the Lessee shall request and the Government shall agree to furnish Lessee with any utilities and services maintained by the Government that Lessee may require in connection with its use of the Leased Premises, Lessee shall pay the Government the agreed charges therefore in accordance with the terms of a separate utilities and/or services agreement and such charges shall be in addition to the consideration rent required under this Lease. Such charges and the method of payment thereof shall be determined by Government or the appropriate supplier of such service, in accordance with applicable laws and regulations, on such basis as the Government or appropriate supplier of such service may establish, and may include a requirement for the installation of adequate connecting and metering equipment at the sole cost and expense of the Lessee.

B. It is expressly agreed and understood that the Government in no way warrants the continued maintenance or adequacy of any utilities or services furnished by it to the Lessee if any utilities and/or services have been so furnished to the Lessee. Lessee shall have the right, subject to Paragraph 8 above, to install such utilities or make improvements to existing utilities on the Leased Premises, including but without limitation, the installation of emergency power generators, as may be necessary for the operation of Lessee's equipment.

#### **11. NON-INTERFERENCE WITH GOVERNMENT OPERATIONS.**

A. The Lessee or any sublessee shall not conduct operations or activities, nor make any alterations, that would interfere with or otherwise restrict Government operations, environmental clean-up or restoration actions by the Government, U. S. Environmental Protection Agency (EPA), state environmental regulators, or their contractors.

B. Cleanup, restoration, or testing activities for environmental purposes by these parties shall take priority over the Lessee's or any sublessee's use of the Leased Premises in the event of any conflict. However, the Government will take reasonable steps to try to prevent interference with the Lessee's or the sublessee's use of the Leased Premises.



## **12. PROTECTION AND MAINTENANCE OF LEASED PREMISES.**

A. Lessee shall, at its own expense, protect, preserve, maintain, and repair the Leased Premises such that it will be kept at all times in at least as good condition as when the Lessee received it, normal wear and tear and Acts of God excepted. The Lessee is responsible for the maintenance and repair of all buildings or structures built on the Leased Premises by the Lessee. The Lessee's responsibilities shall include, but not be limited to, the removal of trash, litter, and broken glass that are generated by the Lessee, its agents, employees, contractors, and invitees, as well as action to prevent and immediately remove any noxious or nuisance-causing conditions and other hazards from the leased premises.

B. Exterior Utility Systems. The Lessee is responsible for the repair and maintenance of all exterior utility distribution lines, connections, and equipment that solely support the Lessee's facilities. This responsibility extends from the facilities leased to the point of connection with the utility system that serves users other than the Lessee. These systems include but are not limited to: heating plants, steam lines, traps, high voltage transformers, substations, power distribution lines (overhead and underground), poles, towers, gas mains, water and sewage mains, water tanks, fire protection systems, hydrants, lift stations, manholes, isolation valves, meters, storm water systems, catch basins, etc.

C. Refuse Removal. Debris, trash and other undesirable materials shall be promptly removed from the Leased Premises by the Lessee, and the Leased Premises shall be kept reasonably clean and free of undesirable materials at all times. At expiration or earlier termination of the Lease, the Leased Premises shall be left without containers, Lessee's equipment, and other undesirable materials, and shall be in an acceptably clean condition.

D. Security and Fire Protection. Lessee shall provide the level of security provided at other schools operated by the Lessee to assure security and safety of the Leased Premises. Any crimes or other offenses, including traffic offenses and crimes and offenses involving damage to or theft of Government property, shall be reported to the appropriate state or local municipal authorities for investigation and disposition and to the Government as property owner. In the event of a fire while school personnel are present at the Leased Premises, the Lessee shall make the initial assessment and take appropriate action to contact and request assistance from the Federal Fire Department at Marine Corps Base Hawaii, and if additional support is required, the Honolulu Fire Department.

## **13. ENVIRONMENTAL PROTECTION PROVISIONS.**

A. Lessee, any sublessees and contractors shall comply with the applicable Federal, state and local laws, regulations and standards that are, or may become, applicable to Lessee's activities on the Leased Premises.

B. Lessee and any sublessee shall be solely responsible for obtaining, at its own cost and expense, any applicable environmental permits required for its operations under the Lease, independent of any existing permits held by the Government. Any and all environmental permits required by the Lessee or any sublessee for its operations on the Leased Premises shall be subject to prior concurrence by the Government. Copies of all permits obtained shall be provided to the Government.

C. Government's rights under this Lease specifically include the right for Government officials to inspect, upon reasonable notice, the Leased Premises for compliance with environmental, safety, and occupational health laws and regulations, whether or not the Government is responsible for enforcing them. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections. The Government normally will give the Lessee or sublessee twenty-four (24) hours prior notice of its intention to enter the Leased Premises unless it determines that entry is required for safety, environmental, operations, or security purposes. The Lessee shall have no claim on account of any entries against the United States or any officer, agent, employee or contractor thereof.

D. The Government, EPA, and the State of Hawaii, its officers, agents, employees, contractors, and subcontractors have the right, upon reasonable notice to Lessee and any sublessee, to enter upon the Leased Premises for the purposes enumerated below and for such other purposes consistent with needs associated with execution of the Government's Installation Restoration Program (IRP);

(1) To conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, test pitting, testing soil borings, and other activities related to the IRP;

(2) To inspect field activities of the Government and its contractors and subcontractors in implementing the IRP;

(3) To conduct any test or survey required by the EPA or state or otherwise relating to the implementation of the IRP or other assessment of environmental conditions on the Leased Premises or to verify any data submitted to the EPA or state relating to such program or conditions; and

(4) To construct, operate, maintain, or undertake any other response or remedial action as required or necessary under the IRP, including, but not limited to, monitoring wells, pumping wells, and treatment facilities.

E. The Lessee agrees to comply with the provisions of any Government health or safety plan in effect under the IRP during the course of any of the above described response or remedial actions. Any inspection, survey, investigation, or other response or remedial action will, to the extent practicable, be coordinated with representatives designated by the Lessee and any sublessee. The Lessee and any sublessees, assignees, licensees, or invitees shall have no claim on account of such entries against the Government or any officer, agent, employee, contractor, or subcontractor thereof. In addition, the Lessee shall comply with all applicable federal, state and local occupational safety and health regulations. Nothing herein shall obligate the Government to compensate Lessee or any third person for any lost profits, lost opportunities, wages or operating expenses or any other costs incurred as a result of Lessee's compliance with this provision.

F. The Lessee shall strictly comply with all applicable hazardous waste management and permitting requirements under the Resource Conservation and Recovery Act (RCRA) and/or its applicable state equivalent. Except as specifically authorized by the Government in writing, the Lessee must provide at its own expense all necessary hazardous waste management facilities in compliance with applicable laws and regulations. Any existing Government hazardous waste management facilities will not be made available to the Lessee or any sublessee. Any DoD component accumulation points for either hazardous or non-hazardous wastes will not be used by the Lessee nor will the Lessee or any sublessee permit its hazardous wastes to be commingled with hazardous waste of any DoD component. Any violation of the requirements of this condition may, depending upon their severity and at the discretion of the Government, be deemed a material breach of this Lease.

G. The Lessee shall have a Government-approved plan for responding to wastewater, hazardous waste, fuel, or toxic chemical spills prior to commencement of operations on the Leased Premises. Such plan shall be independent of any existing Government plan for the Installation. Unless expressly agreed to by the Government otherwise, the Lessee shall not rely on use of installation personnel or equipment for spill containment. Should the Government provide spill containment services upon request of the Lessee, or because Lessee was not, in the opinion of the Real Estate Contracting Officer, conducting timely cleanup actions, the Lessee shall reimburse the Government for the full cost of such services.

H. The Lessee shall not conduct or permit any sublessee(s) to conduct any subsurface excavation, digging, drilling or other disturbance of the surface without the prior written approval of the Government. If, after receipt of written approval by the Government, the Lessee undertakes any subsurface excavation, digging, drilling, or other disturbance of the surface, the Lessee shall immediately notify the Government should any buried debris, or foreign, potentially hazardous material be encountered during this work.

I. The Lessee and any sublessee shall provide prior written notification to the Government of any articles, tools, equipment, or devices brought on-site that contain radioactive material. Examples of potential radiological sources include radium-containing dials, gauges, and illuminators; tritium in illuminators and exit signs; thorium in optical lenses or welding consumables; abrasive blasting material; or any radioactive source used for calibration, medical diagnosis or therapy, or industrial radiography. The Lessee is responsible for removal of any such potential radiological sources upon termination of the Lease.

J. Storage, treatment, or disposal of toxic or hazardous materials on the Leased Premises is prohibited except as authorized by the Government in accordance with 10 U.S.C. §2692. Any hazardous materials that the Government authorizes the storage, treatment, or disposal of in connection with the use of the Leased Premises shall be identified on the Hazardous Materials List, attached as **EXHIBIT F**.

#### **14. TERMINATION.**

**A. Termination by Government.** The Government shall have the right to terminate this Lease in whole or in part, without liability, and regardless of any lack of breach by Lessee of any of the terms and conditions of this Lease upon 180 days written notice to the Lessee.

**B. National Emergency.** In the event of a national emergency declared by the President or the Congress, the Government may terminate this Lease immediately, without notice to Lessee.

**C. Breach of Terms By Lessee.** In the event of breach by the Lessee of any of the terms, conditions, or obligations hereof, the Lessee shall be afforded thirty (30) calendar days from the receipt of Government's notice of intent to terminate, to complete the performance of the obligation or otherwise cure the subject breach and avoid termination of this Lease, unless the Government determines in its sole and unreviewable discretion that a shorter period of time is required for safety, environmental, operational or security purposes. The Government may grant a reasonable extension of time to complete the cure. In the event that the Government shall elect to terminate this Lease on account of the breach by the Lessee of any of its terms and conditions, the Government shall be entitled to recover and the Lessee shall pay to the Government:

(1) The reasonable costs incurred in resuming possession of the Leased Premises to the extent permitted by law;

(2) The costs incurred in performing any obligation on the part of the Lessee to be performed hereunder; and

(3) An amount equal to the aggregate of any maintenance obligations, and charges assumed hereunder and not paid or satisfied, such amounts shall be due and payable at the time when such obligations and charges would have accrued or become due and payable under this Lease.

**D. Sale or Transfer of the Property.** If the property upon which the Leased Premises are located is to be sold or transferred by the Government during the term of this Lease, the Government may terminate this Lease by providing 180 days written notice to Lessee.

**E. Federal Requirement.** In the event the property upon which the Leased Premises are located is to be required for federal use, or if Lessee's use of the property is not consistent with federal program purposes, the Government may terminate the Lease upon issuance of 180 days written notice to Lessee.

**F. Termination by Lessee.** Lessee may terminate this Lease at any time upon 180 days written notice to the Real Estate Contracting Officer.

**15. INDEMNIFICATION.** Lessee shall indemnify, defend and save Government harmless and shall pay all costs, expenses, and reasonable attorney's fees for all trial and appellate levels and post-judgment proceedings in connection with any fines, suits, actions, damages, liability and causes of action of every nature whatsoever arising or growing out of, or in any manner connected with, the occupation or use of the Leased Premises by Lessee, its employees, servants, agents, guests, invitees, and contractors. This includes, but is not limited to, any fines, claims, demands and causes of action of every nature whatsoever that may be made upon, sustained or incurred by the Government by reason of any breach, violation, omission or non-performance of any term, covenant or condition hereof on the part of the Lessee, its employees, servants, agents, guests, invitees, or contractors. This indemnification also applies to claims arising out of the furnishings of any utilities or services by the Government or any interruption therein or failure thereof, occasioned by the negligence or lack of diligence of Lessee or its respective officers, agents, servants or employees. However, this indemnity shall not extend to damages due to the sole fault of the Government or its employees, agents, servants, guests, invitees or contractors. This covenant shall survive the termination of this Lease.

## **16. LABOR PROVISIONS.**

**A. Equal Opportunity.** During the term of this Lease, Lessee and each sublessee agree as follows with regard to all employees located at, or involved with, the Leased Premises:

(1) Lessee and each sublessee shall not discriminate against any employee or applicant for employment because of race, color, age, marital status, handicap, religion, sex, or national origin. Lessee and each sublessee shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, age, marital status, handicap, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, retention or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, selection for training, including apprenticeship. The Lessee and each sublessee agree to post in conspicuous places available to employees and applicants for employment, notices to be provided by the Government setting forth the provisions of this nondiscrimination clause.

(2) Lessee and each sublessee shall, in all solicitations or advertisements for employees placed at the Leased Premises by or on behalf of Lessee and each sublessee, state that all qualified applicants will receive consideration for employment without regard to age, marital status, handicap, race, color, religion, sex, or national origin.

(3) Lessee and each sublessee shall send to each labor union or representative of workers for the Leased Premises with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by Government, advising the labor union or worker's representative of commitments under this Equal Opportunity Clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Lessee and each sublessee shall comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor as it relates to the Leased Premises.

(5) The Lessee and each sublessee shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor or pursuant thereto, and will permit access to its books, records, and accounts by Government and the Secretary of Labor for purposes of investigating to ascertain compliance with such rules, regulations, and orders.

(6) In the event of Lessee's or any sublessee's noncompliance with the Equal Opportunity Clause or with any of said rules, regulations, or orders, this Lease or such sublease may be canceled, terminated, or suspended in whole or in part and Lessee or such sublessee may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Lessee shall include the above provisions in every sublease unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, so that such provisions will be binding upon each sublessee. The Lessee will take such action with respect to any sublessee as Government may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event Lessee becomes involved in, or is threatened with, litigation with sublessee as a result of such direction by Government, the Lessee may request the Government to enter into such litigation to protect the interests of the Government.

**B. Contract Work Hours and Safety Standards Act (40 U.S.C. §327-330).** This Lease and each sublease, to the extent that it is a contract of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. §327-330) and is not covered by the Walsh-Healy Public Contracts Act (41 U.S.C. §35-45), is subject to the following provisions and exceptions of said Contract Work Hours and Safety Standards

Act and to all other provisions and exceptions of said law as they apply to employment at the Leased Premises:

(1) Lessee and each sublessee shall not require or permit any laborer or mechanic in any workweek in which he/she is employed on any work on the Leased Premises to work in excess of 40 hours in such workweek subject to the provisions of the Contract Work Hours and Safety Standards Act unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his/her basic rate of pay for all such hours worked in excess of 40 hours in such workweek. The "basic rate of pay", as used in this clause, shall be the amount paid per hour, exclusive of the employer's contribution or cost for fringe benefits and any cash payment made in lieu of providing fringe benefits, or the basic hourly rate contained in the wage determination, whichever is greater.

(2) In the event of any violation of the provision of the preceding sub-paragraph, Lessee or sublessee shall be liable to any affected employee for any amounts due, and to the Government for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph 16.B.1 above, in the sum of \$10.00 for each calendar day on which such employee was required or permitted to be employed on such work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the preceding sub-paragraph.

C. Convict Labor. In connection with the performance of work required by this Lease or any sublease, Lessee or such sublessee agrees not to employ any person undergoing a sentence of imprisonment at hard labor.

17. DAVIS-BACON. All construction workers, laborers and mechanics employed by Lessee's general contractor and each of its subcontractors and sub-subcontractors who perform work on the site of the construction of improvements performed on behalf of the Government during the term of this lease are covered by The Davis-Bacon Act, as amended, 40 U.S.C. 3142, et seq., and the implementing regulation (together, the "Davis-Bacon Act"), and shall be paid wages and rates not less than those prevailing on similar work in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act. To the extent that there is not a prevailing wage for a particular labor category and the Davis-Bacon Act permits a negotiated wage to be paid, such negotiated wage may be paid. Lessee shall cause its general contractor to comply and provide for compliance by subcontractors and sub-subcontractors. Work completed by the Lessee on behalf of the Government will be subject to the wage determination in effect under the Davis-Bacon Act at the time of the commencement of negotiations for such work.

18. SUBMISSION OF NOTICES. Notices shall be sufficient under this Lease if made in writing and submitted in the case of Lessee to:

Director, Land Division  
State of Hawaii Department of Land and Natural Resources  
PO Box 621  
Honolulu, HI 96809  
(808) 587-0408; fax (808) 587-0455

and in the case of the Government to:

Commanding Officer (Code OPHB1)  
Naval Facilities Engineering Command Hawaii  
400 Marshall Road, Bldg X-11  
Pearl Harbor, HI 96860-3139  
(808) 471-1170 (Asset Management Department, Real Estate Division); fax (808) 471-1160

The above-named individuals (or their authorized representatives) shall be the representatives of the parties and the points of contact during the period of the Lease. Such notice shall be deemed to have been given unless delivered personally, when deposited in the U.S. mail, postage pre-paid, certified mail, return receipt requested, and addressed as set forth above or to such other address as either party shall have provided to the other by like notice, or upon confirmation of receipt if sent by facsimile on a regular business day and addressed as set forth above, or within twenty-four (24) hours, or the next business day if sent by an overnight delivery service such as Federal Express.

**19. AUDIT.** This Lease and any sublease shall be subject to audit by any and all cognizant Government agencies. Lessee and each sublessee shall make available to such agencies for use in connection with such audits all records that it maintains with respect to this Lease or any sublease and copies of all reports required to be filed hereunder or thereunder.

**20. INTEREST.** Notwithstanding any other provision of this Lease, unless paid within thirty (30) calendar days, all amounts that become payable by Lessee to Government under this Lease (net of any applicable tax credit under the Internal Revenue Code) shall bear interest from the date due. The rate of interest will be the Current Value of Funds Rate published by the Secretary of the Treasury pursuant to 31 U.S.C. §3717 (Debt Collection Act of 1982). Amounts shall be due upon the earliest of (a) the date fixed pursuant to this Lease, (b) the date of the first written demand for payment, consistent with this Lease, including demand consequent upon default termination, (c) the date of transmittal by Government to Lessee of a proposed supplemental agreement to confirm completed negotiations fixing the amount, or (d) if this Lease provides for revision of prices, the date of written notice to Lessee stating the amount of refund payable in connection with a pricing proposal or in connection with a negotiated pricing agreement not confirmed by lease supplement.

**21. AGREEMENT.** This Lease shall not be modified unless in writing and signed by both parties. No oral statements or representation made by, for, or on behalf of either party shall be a part of this Lease. Should conflict arise between the provisions of this Lease and any attachment hereto, or any other agreement between Government and Lessee, the provisions of this Lease shall take precedence.

**22. FAILURE TO INSIST ON COMPLIANCE.** The failure of Government to insist, in any one or more instances, upon performance of any of the terms, covenants, or conditions of this Lease shall not be construed as a waiver or relinquishment of Government's right to the future performance of any such terms, covenants, or conditions, and Lessee's obligations in respect to such future performance shall continue in full force and effect.

**23. DISPUTES.**

**A.** This Lease is subject to the provisions of the Contract Disputes Act of 1978, as amended, (41 U.S.C. §601-613), the "Act".

**B.** Except as provided in the Act, all disputes arising under or relating to this Lease shall be resolved under this clause and the provisions of the Act.

**C.** "Claim", as used in this clause, means a written demand or written assertion by the Lessee or the Government seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of Lease terms, or other relief arising under or relating to this Lease. A claim arising under this Lease, unlike a claim relating to this Lease, is a claim that can be resolved under a Lease clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph 22.D.(2) below. A voucher, invoice, or other routine request for payment that is not in dispute is not a claim under the Act. The request may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

**D.** (1) A claim by the Lessee shall be made in writing and submitted within six (6) years after accrual of the claim to the Commander, Naval Facilities Engineering Command Pacific, for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the Commander, Naval Facilities Engineering Command Pacific.

(2) Lessee shall provide the certification stated in subparagraph (2)(b)(ii) immediately below, when submitting any claim:

(a) Exceeding \$100,000; or

(b) Regardless of the amount claimed, when using:

(i) Arbitration conducted pursuant to 5 U.S.C. §575-580; or

(ii) Any other alternative means of dispute resolution (ADR) technique that the agency elects to handle in accordance with the Administrative Dispute Resolution Act (ADRA).

"I certify that the claim is made in good faith; that the supporting data is accurate and complete to the best of Lessee's knowledge and belief; that the amount requested accurately reflects the Lease adjustment for which the Lessee believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Lessee."

(3) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(4) The certification may be executed by any person duly authorized to bind the Lessee with respect to the claim.

**E.** For Lessee claims of \$100,000 or less, the Commander, Naval Facilities Engineering Command Pacific, must, if requested in writing by the Lessee, render a decision within sixty (60) days of the request. For Lessee-certified claims over \$100,000.00, the Commander, Naval Facilities Engineering Command Pacific, must, within sixty (60) days decide the claim or notify the Lessee of the date by which the decision will be made.

(1) The decision of the Commander, Naval Facilities Engineering Command Pacific, shall be final unless the Lessee appeals or files a suit as provided in the Act.

**F.** At the time a claim by the Lessee is submitted to the Commander, Naval Facilities Engineering Command Pacific, or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using arbitration conducted pursuant to 5 U.S.C. §575-580 or when using any other ADR techniques that the agency elects to handle in accordance with ADRA, any claim, regardless of amount, shall be accompanied by the certification described in Paragraph 22.D. (2)(b)(ii) above and executed in accordance with Paragraph 22.D.(4) above.

**G.** The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the Commander, Naval Facilities Engineering Command Pacific, received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in (FAR) 48 CFR 33.201, interest shall be paid from the date that the Commander, Naval Facilities Engineering Command Pacific, initially receives the claim. Simple interest on claims shall be paid at the rate fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the Commander, Naval Facilities Engineering Command Pacific receives the claim and then at the rate applicable for each six (6) month period as fixed by the Treasury Secretary during the pendency of the claim.

**H.** Notwithstanding anything herein to the contrary, the Lessee shall proceed diligently with the performance of the Lease, pending final resolution of any request for relief, claim, appeal, or action arising under the Lease, and comply with any decision of the Commander, Naval Facilities Engineering Command Pacific.

**24. COVENANT AGAINST CONTINGENT FEES.** The Lessee warrants that no person or agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial agencies maintained by Lessee for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this Lease without liability or in its discretion to require Lessee to pay, in addition to the rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

**25. OFFICIALS NOT TO BENEFIT.** No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Lease or to any benefit to arise therefrom, but this provision shall not be construed to extend to this Lease if made with a corporation for its general benefit.

**26. LIENS.** The Lessee and each sublessee shall promptly discharge or cause to be discharged any valid lien, claim, or demand of any kind, except one in favor of Government, which at any time may arise or exist with respect to the Leased Premises or materials or equipment furnished thereof, or any part thereof, due to the Lessee's or such sublessee's use of the Leased Premises, and if the same shall not be promptly discharged by Lessee or such sublessee, or should Lessee or any sublessee be declared bankrupt or make an assignment on behalf of creditors, or should the leasehold estate be taken by execution, Government reserves the right to take immediate possession without any liability to the Lessee or any sublessee. The Lessee and any sublessee shall be responsible for any costs incurred by Government in securing clear title to its property due to their acts or omissions clouding the title.

**27. TAXES.** The Lessee shall pay to the proper authority, when and as the same become due and payable, all taxes, assessments, and similar charges that, at any time during the term of this Lease, may be imposed with respect to the Leased Premises. Title 10 U.S.C. §2667 (f) contains the consent of Congress to the taxation of Lessee's interest in the Leased Premises, whether or not the Leased Premises are in an area of exclusive Federal jurisdiction. Should Congress consent to taxation of Government's interest in the Leased Premises, this Lease will be renegotiated.

**28. SUBJECT TO EXISTING AND FUTURE EASEMENTS AND RIGHTS-OF-WAY.** This Lease, and each sublease, is subject to all outstanding easements and rights-of-way for location of any type of facility over, across, in, and upon the Leased Premises, or any portion thereof, and to the right of Government to grant such additional easements and rights-of-way over, across, in and upon the Leased Premises as it shall be deemed to be in the public interest; provided that (i) the Government coordinates with the Lessee to minimize any impact to the Lessee's operations, and (ii) any such additional easement or right-of-way shall be conditioned on the assumption by the grantee thereof of liability to Lessee for such damages as Lessee shall suffer for property destroyed or property rendered unusable on account of the grantee's exercise of its rights hereunder. There is hereby reserved to the holders of such easements and rights-of-way as are presently outstanding or which may hereafter be granted, to any workers officially engaged in the construction, installation, maintenance, operation, repair, or replacement of facilities located thereon, and to any Federal, state, or local official engaged in the official inspection thereof, such reasonable rights of ingress and egress over the Leased Premises as shall be necessary for the performance of their duties with regard to such facilities subject to Paragraph 9 (Access by Government) above.

**29. INGRESS, EGRESS, PARKING AND SECURITY.**

A. The Lessee and any sublessees, and their employees, vendors, and business invitees will be granted reasonable access to the Leased Premises under this Lease. As a condition, the Lessee and sublessee, and their employees, vendors, and business invitees agree to adhere to all base rules and regulations regarding Installation security, ingress, egress, safety and sanitation as may be prescribed from time to time by the Installation's Commanding Officer. The Lessee and any sublessee and their employees, vendors, and business invitees shall coordinate parking with the appropriate office of the Installation.



B. Installation Security. The Leased Premises are located on a secure military installation and the Lessee and any sublessee(s) are required to comply with all applicable security rules, regulations, and procedures issued by the Installation Commanding Officer. Any and all employees of the Lessee or sublessee(s) that are required by the Installation to do so, shall obtain a security clearance to access the Leased Premises. Failure to obtain the required security clearance shall result in denial of access to the Leased Premises of the Lessee's or sublessee(s) employees. The Lessee and any sublessee(s) agree to hold harmless the Government from any liability of any nature for financial or other losses incurred by the Lessee or any sublessee(s) by reason of Lessee's or any sublessee(s) employees failure to obtain security clearance for access to the Leased Premises.

**30. ADMINISTRATION.** Except as otherwise provided for under the Lease, the Real Estate Contracting Officer of Naval Facilities Engineering Command Pacific shall have complete charge of the administration of this Lease, including granting any consents and/or approvals hereunder, and shall exercise full supervision and general direction thereof insofar as the interests of the Government are affected.

**31. DAMAGE TO THE LEASED PREMISES.** In the event the Leased Premises or any portion of the Leased Premises is damaged either directly or indirectly as a result of Lessee's use or occupancy of the Leased Premises, whether during the construction, operation, maintenance, or replacement or removal of improvements or otherwise, due to acts or omissions of Lessee, its agents, contractors or employees, the Lessee shall, upon demand, either compensate the Government for such loss or damage, or rebuild, replace or repair the item or items of the Leased Premises or facilities so lost or damaged, as the Government may elect.

**32. APPLICABLE RULES AND REGULATIONS.**

A. Lessee and any sublessee shall comply with all federal, state, and local laws, regulations, and standards that are applicable or may become applicable to the Lessee's or sublessee's activities on the Leased Premises. This includes, but is not limited to, laws and regulations concerning the environment, construction of facilities, health, safety, food service, water supply, sanitation, and any licenses and permits to conduct business. The Lessee and any sublessee is responsible for obtaining and paying for permits required for its operations under the Lease.

B. Further, all activities authorized hereunder shall be subject to such rules, regulations, and procedures regarding Installation security, supervision or otherwise, as may, from time to time, be prescribed by the Installation Commanding Officer.

**33. SUBCONTRACTORS AND AGENTS FOR LESSEE.** All work involving the Lessee's facilities must be performed by skilled tradesmen who are accomplished at their craft and bonded against loss due to damages resulting directly or indirectly from work performed.

**34. SURRENDER.** Upon the expiration of this Lease or its prior termination, the Lessee shall quietly and peacefully remove itself and its personal property from the Leased Premises and surrender the possession thereof to Government; provided, in the event Government shall terminate this Lease upon less than thirty (30) days notice, Lessee shall be allowed a reasonable period of time, as determined by the Real Estate Contracting Officer, but in no event to be less than thirty (30) days from receipt of notice of termination, in which to remove all of its personal property from and terminate its operations on the Leased Premises. During such period prior to surrender, all obligations assumed by Lessee under this Lease shall remain in full force and effect; provided, however, that if the Government shall in its sole discretion, determine that such action is equitable under the circumstances, it may suspend, in whole or in part, any further accruals of rent if any, or maximum amount to be expended between the date of termination of the Lease and the date of final surrender of the Leased Premises. Government may, in its discretion, declare any personal property that has not been removed from the Leased Premises upon termination provided for above, as abandoned personal property upon an additional ninety (90) days notice.

**35. EXHIBITS** to this Lease are set forth below:

- Exhibit A. Legal description of Leased Premises
- Exhibit B. Location Map of Leased Premises
- Exhibit C. Map of Leased Premises
- Exhibit D. Map of Leased Premises showing utility rights-of-way
- Exhibit E. Environmental Condition of Property (ECP) Document
- Exhibit F. Hazardous Materials List

**IN WITNESS WHEREOF**, the parties hereto have, on the respective dates set forth below, duly executed this Lease, effective as of the day and year written above.

**THE UNITED STATES OF AMERICA,**  
Acting by and through the Department of the Navy

By: \_\_\_\_\_  
(Signature)

Date: \_\_\_\_\_

\_\_\_\_\_  
(Print Name)

Naval Facilities Engineering Command Pacific  
Real Estate Contracting Officer

**LESSEE:**

**APPROVED**  
**AS TO FORM:** \_\_\_\_\_  
State Attorney General

Date: \_\_\_\_\_

**THE STATE OF HAWAII,**  
Acting by and through its Department of Land and Natural Resources

By: \_\_\_\_\_  
(Signature)

Date: \_\_\_\_\_

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)

EXHIBIT "A"

MOKAPU ELEMENTARY SCHOOL SITE

PARCEL 1

Land Situate at Kuwaahe, Kaneohe, Koolaupoko, Oahu, Hawaii

Being a portion of the former Kuwaahe Military Reservation as described in Presidential Executive Order No. 7503 dated December 3, 1936.

Beginning at the Southeast corner of this parcel of land, on the North side of Mokapu Road (Project No. DA-NR-7), the true azimuth and distance from the West corner of Lot 7-C of Land Court Application 1382 being  $109^{\circ} 29' 2.71$  feet, and the coordinates of said point of beginning referred to Government Survey Triangulation Station "Mokapu" being 3951.11 feet South and 5787.14 feet West, thence running by azimuths measured clockwise from true South:

1.  $109^{\circ} 29'$  406.19 feet along the Northeast side of said Mokapu Road, along remainder of Presidential Executive Order No. 7503;
2.  $105^{\circ} 47'$  185.24 feet along same;
3.  $195^{\circ} 52'$  745.97 feet along remainder of Presidential Executive Order No. 7503;
4.  $228^{\circ} 50' 30''$  447.40 feet along same;  
thence on a curve to the left with a radius of 1400.00 feet, the chord azimuth and distance being:
5.  $309^{\circ} 40' 22''$  446.17 feet along same;
6.  $19^{\circ} 29'$  968.50 feet along same to the point of beginning and containing an area of 14.235 acres.

TOGETHER WITH non-exclusive rights of access over and across the existing station road network to and from public roads.

A- For Storm Drain Purposes Only

Land Situate at Kuwaaaohe, Kaneohe, Koolaupoko, Oahu, Hawaii  
Being a portion of Presidential Executive Order No. 7503  
dated December 3, 1936.

Beginning at the Southeast corner of this parcel of land,  
the true azimuth and distance from the Southwest corner of  
Mokapu Elementary School (Parcel 1 above) being  $195^{\circ} 52' 330.00$   
feet and the coordinates of said point of beginning referred to  
Government Survey Triangulation Station "Mokapu" being 3447.82  
feet South and 6258.11 feet West, thence running by azimuths  
measured clockwise from true South:

1.  $105^{\circ} 52'$  20.00 feet along remainder of said  
Presidential Executive Order No.  
7503;
2.  $195^{\circ} 52'$  24.00 feet along same;
3.  $285^{\circ} 52'$  20.00 feet along same;
4.  $15^{\circ} 52'$  24.00 feet along same, along the  
Northwest boundary of Mokapu  
Elementary School (Parcel 1  
above), to the point of beginning  
and containing an area of 480  
square feet.

B- For Sewer Overflow Purposes Only

Land Situate at Kuwaaaohe, Kaneohe, Koolaupoko, Oahu, Hawaii  
Being a portion of Presidential Executive Order No. 7503  
dated December 3, 1936.

Beginning at the Southeast corner of this parcel of land,  
the true azimuth and distance from the Southwest corner of  
Mokapu Elementary School (Parcel 1 above) being  $195^{\circ} 52' 173.00$   
feet and the coordinates of said point of beginning referred to

Government Survey Triangulation Station "Mokapu" being 3598.84 feet South and 6301.03 feet West, thence running by azimuths measured clockwise from true South:

1. 105° 52' 22.00 feet along remainder of said Presidential Executive Order No. 7503;
2. 195° 52' 10.00 feet along same;
3. 285° 52' 22.00 feet along same;
4. 15° 52' 10.00 feet along same, along the Northwest boundary of Mokapu Elementary School (Parcel 1 above), to the point of beginning and containing an area of 220 square feet.

C: For Storm Drain Purposes Only

Land Situate at Kuwaahoe, Kaneohe, Koolauloko, Oahu, Hawaii  
Being a portion of Presidential Executive Order No. 7503  
dated December 3, 1936.

Beginning at the Southeast corner of this parcel of land, the true azimuth and distance from the Southwest corner of Mokapu Elementary School (Parcel 1 above) being 195° 52' 18.00 feet and the coordinates of said point of beginning referred to Government Survey Triangulation Station "Mokapu" being 3747.93 feet South and 6343.41 feet West, thence running by azimuths measured clockwise from true South:

1. 105° 52' 16.00 feet along remainder of said Presidential Executive Order No. 7503;
2. 195° 52' 17.00 feet along same;
3. 285° 52' 16.00 feet along same;
4. 15° 52' 17.00 feet along same, along the Northwest boundary of Mokapu Elementary School (Parcel 1 above), to the point of beginning and containing an area of 272 square feet.

D: For Storm Drain Purposes Only

Land Situate at Kuwaaohē, Kaneohe, Koolāupoko, Oahu, Hawaii  
Being a portion of Presidential Executive Order No. 7503  
dated December 3, 1936, and being also a portion of Mokapu Road  
(Project No. DA-NR-7).

Beginning at the Northwest corner of this parcel of land,  
the true azimuth and distance from the Southwest corner of  
Mokapu Elementary School (Parcel 1 above) being 285° 47' 95.35  
feet and the coordinates of said point of beginning referred to  
Government Survey Triangulation Station "Mokapu" being 3791.18  
feet South and 6256.57 feet West, thence running by azimuths  
measured clockwise from true South:

1. 285° 47' 38.81 feet along the Southwest boundary  
of Mokapu Elementary School  
(Parcel 1 above), along remainder  
of said Presidential Executive  
Order No. 7503;
2. 17° 23' 24.68 feet along remainder of Mokapu  
Road (Project No. DA-NR-7), along  
remainder of said Presidential  
Executive Order No. 7503;
3. 107° 23' 18.00 feet along same;
4. 197° 23' 8.00 feet along same;
5. 144° 15' 25.99 feet along same to the point of  
beginning and containing an area  
of 608 square feet.

E: For Water Line Purposes Only

Land Situate at Kuwaaohē and Halekou-Kaluapuhi,  
Kaneohe, Koolāupoko, Oahu, Hawaii

Being portions of Presidential Executive Order No. 7503  
dated December 3, 1936, and Part C of Governor's Executive  
Order No. 978 dated March 3, 1942, and being also a portion of  
Mokapu Road (Project No. DA-NR-7).

Beginning at the Northeast corner of this parcel of land, the true azimuth and distance from the Southeast corner of Mokapu Elementary School (Parcel 1 above) being 109° 29' 317.18 feet, and the coordinates of said point of beginning referred to Government Survey Triangulation Station "Mokapu" being 3845.32 feet South and 6086.16 feet West, thence running by azimuths measured clockwise from true South:

1. 17° 23' 15.84 feet along remainder of said Presidential Executive Order No. 7503, along remainder of said Mokapu Road;
2. 107° 23' 160.00 feet along same;
3. 17° 23' 29.00 feet along remainders of said Presidential Executive Order No. 7503 and Part C of Governor's Executive Order No. 978, along remainder of said Mokapu Road;
4. 107° 23' 10.00 feet along remainder of said Governor's Executive Order No. 978, along remainder of said Mokapu Road;
5. 197° 23' 16.00 feet along remainders of Part C of Governor's Executive Order No. 978 and Presidential Executive Order No. 7503, along remainder of said Mokapu Road;
6. 107° 23' 12.00 feet along remainder of Presidential Executive Order No. 7503, along remainder of said Mokapu Road;
7. 197° 23' 23.00 feet along same;
8. 287° 23' 172.00 feet along same;
9. 197° 23' 6.20 feet along same;
10. 289° 29' 10.01 feet along the Southwest boundary of Mokapu Elementary School (Parcel 1 above) to the point of beginning and containing an area of 2,326 square feet.

F: For Sewer Force Main Only

Land Situate at Kuwaaohē and Halekou-Kaluapuhi,  
Kaneohe, Koolāupoko, Oahu, Hawaii.

Being portions of Presidential Executive Order No. 7503 dated December 3, 1936, and portions of Governor's Executive Order No. 978 dated March 3, 1942, Parts B and C, and crossing Mokapu Road (Project No. DA-NR-7).

Beginning at the Northwest corner of this parcel of land, the true azimuth and distance from the Southeast corner of Mokapu Elementary School (Parcel 1 above) being  $109^{\circ} 29'$  296.35 feet and the coordinates of said point of beginning referred to Government Survey Triangulation Station "Mokapu" being 3852.27 feet south and 6066.52 feet West, thence running by azimuths measured clockwise from true South:

1.  $289^{\circ} 39'$  10.03 feet along the Southwest boundary of said Mokapu Elementary School, along remainder of said Presidential Executive Order No. 7503;
2.  $15^{\circ} 23'$  764.71 feet across said Mokapu Road, along remainders of said Presidential Executive Order No. 7503 and Parts C and B of said Governor's Executive Order No. 978;
3.  $105^{\circ} 23'$  10.00 feet along remainder of said Governor's Executive Order No. 978;
4.  $195^{\circ} 23'$  765.42 feet along remainders of said Governor's Executive Order No. 978, Parts B and C, and said Presidential Executive Order No. 7503, and across said Mokapu Road, to the point of beginning and containing an area of 7,651 square feet.



G: For Electric Duct Line Only

Land Situate at Kuwaaohē and Halekou-Kaluapuhi,

Kaneohe, Koolau-poko, Oahu, Hawaii

Being portions of Presidential Executive Order No. 7503 dated December 3, 1936, and Governor's Executive Order No. 978 dated March 3, 1942, Part C, and crossing Mokapu Road (Project No. DA-NR-7).

Beginning at the Northwest corner of this parcel of land, the true azimuth and distance from the Southeast corner of Mokapu Elementary School (Parcel 1 above) being  $109^{\circ} 29'$  220.28 feet and the coordinates of said point of beginning referred to Government Survey Triangulation Station "Mokapu" being 3877.64 feet South and 5994.81 feet West, thence running by azimuths measured clockwise from true South:

1.  $289^{\circ} 29'$  11.74 feet along the Southwest boundary of said Mokapu Elementary School, along remainder of said Presidential Executive Order No. 7503;  
thence on a curve to the right with a radius of 55.00 feet, the chord azimuth and distance being:
2.  $5^{\circ} 22' 30''$  26.81 feet along remainders of said Presidential Executive Order No. 7503 and said Mokapu Road;
3.  $19^{\circ} 29'$  85.00 feet along remainders of said Presidential Executive Order No. 7503 and said Governor's Executive Order No. 978, Part C, across said Mokapu Road.
4.  $109^{\circ} 29'$  10.00 feet along remainder of said Governor's Executive Order No. 978, Part C;
5.  $199^{\circ} 29'$  85.00 feet along remainders of said Governor's Executive Order No. 978, Part C, and said Presidential Executive Order No. 7503, across said Mokapu Road;

thence on a curve to the left with a radius of 45.00 feet, the chord azimuth and distance being:

6. 181° 50' 27.28 feet along remainders of said Presidential Executive Order No. 7503 and said Mokapu Road to the point of beginning and containing an area of 1,124 square feet.

H: For Electric Duct Line Only

Land Situate at Kuwaaohē, Ulupau, and Halekou-Kaluapuhi,  
Kaneohe, Koolaupoko, Oahu, Hawaii

Being portions of Part C of Governor's Executive Order No. 978 dated March 3, 1942, Presidential Executive Order No. 7503 dated December 3, 1936, Lots 7-A and 7-B (Map 2) of Land Court Application 1382, and Lots 5-A (Map 34) and 5-B-2 (Map 104) of Land Court Application 677, covered by Transfer Certificates of Title Nos. 52801, 44566, 52800, and 52716, respectively, issued to the United States of America.

Beginning at the Southwest corner of this parcel of land, the true azimuth and distance from the Southeast corner of Easement G above being 199° 29' 3.00 feet, and the coordinates of said point of beginning referred to Government Survey Triangulation Station "Mokapu" being 3985.55 feet South and 6013.60 feet West, thence running by azimuths measured clockwise from true South:

1. 199° 29' 10.00 feet along remainder of Part C of said Governor's Executive Order No. 978;
2. 289° 29' 690.00 feet along remainders of Parcel C of said Governor's Executive Order No. 978, said Presidential Executive Order No. 7503, said Lot 7-B of Land Court Application 1382 and said Lot 5-B-2 of Land Court Application 677;

3. 19° 29' 10.00 feet along remainders of said Lots 5-B-2 and 5-A of Land Court Application 677;
4. 109° 29' 690.00 feet along remainders of said Lot 5-A of Land Court Application 677, said Lot 7-A of Land Court Application 1382, said Presidential Executive Order No. 7503 and said Part C of Governor's Executive Order No. 978 to the point of beginning and containing an area of 6,900 square feet.

J: For Road Approach Only

Land Situate at Kuwaaohē, Kaneohe, Koolāupoko, Oahu, Hawaii  
Being a portion of Presidential Executive Order No. 7503 dated December 3, 1936, and being also a portion of Mokapu Road (Project No. DA-NR-7).

Beginning at the Northwest corner of this parcel of land, the true azimuth and distance from the Southwest corner of Mokapu Elementary School (Parcel 1 above) being 105° 47' 20.00 feet and the coordinates of said point of beginning referred to Government Survey Triangulation Station "Mokapu" being 3759.81 feet South and 6367.57 feet West, thence running by azimuths measured clockwise from true South:

1. 285° 47' 73.00 feet along remainder of said Presidential Executive Order No. 7503, portion being along the Southwest boundary of said Mokapu Elementary School;
2. 15° 47' 26.44 feet along remainder of said Presidential Executive Order No. 7503, being also along remainder of said Mokapu Road;
3. 105° 47' 73.00 feet along same;
4. 195° 47' 26.44 feet along same to the point of beginning and containing an area of 1,930 square feet.

K: For Road Approach Only

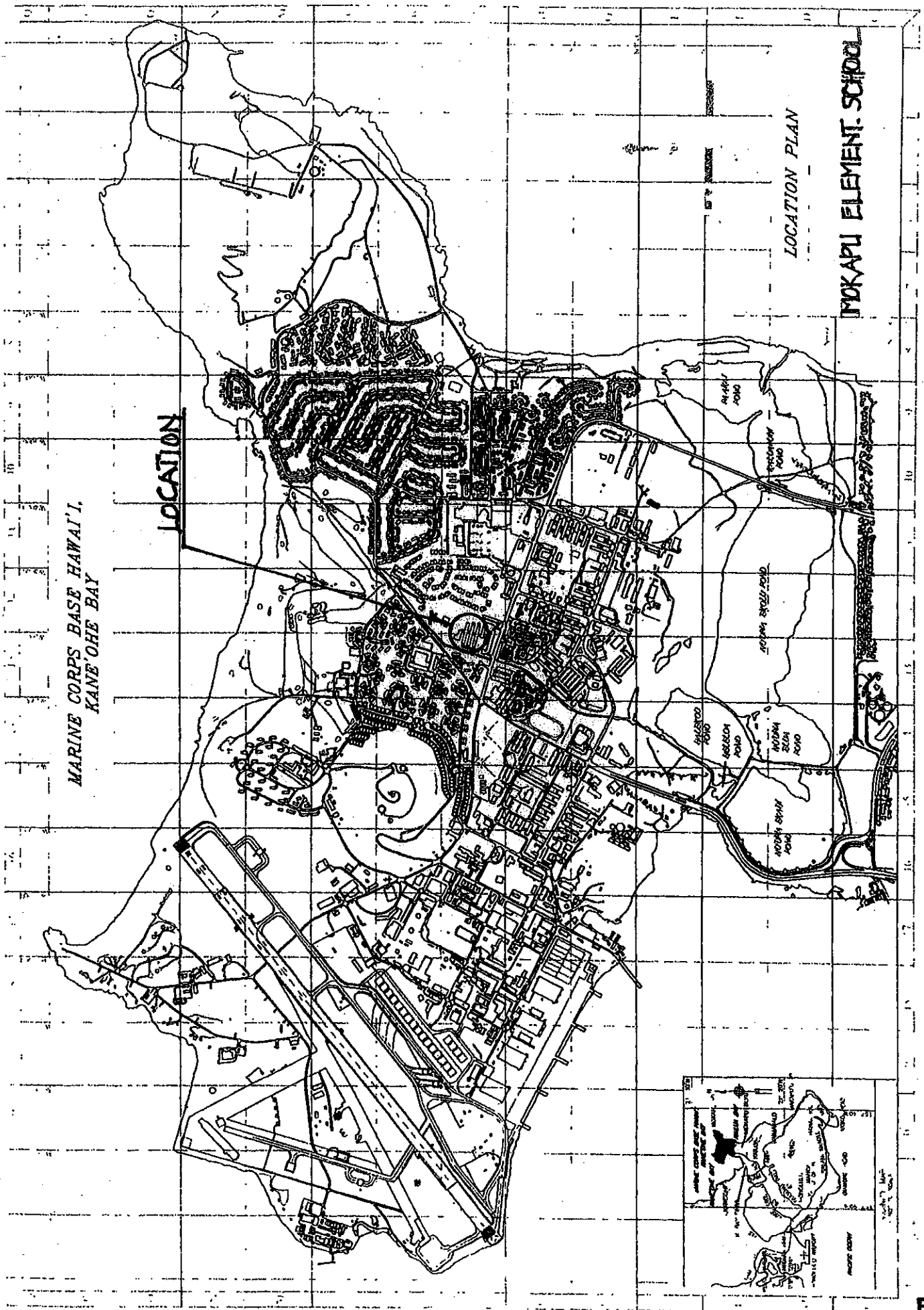
Land Situate at Kuwaaohē, Kaneohe, Koolāupoko, Oahu, Hawaii

Being a portion of Presidential Executive Order No. 7503 dated December 3, 1936, and being also a portion of Mokapu Road (Project No. DA-NR-7).

Beginning at the Northeast corner of this parcel of land, the true azimuth and distance from the Southeast corner of Mokapu Elementary School (Parcel 1 above) being 109° 29' 87.00 feet and the coordinates of said point of beginning referred to Government Survey Triangulation Station "Mokapu" being 3922.09 feet South and 5869.16 feet West, thence running by azimuths measured clockwise from true South:

1. 19° 29' 27.00 feet along remainder of said Presidential Executive Order No. 7503, being also along remainder of said Mokapu Road;
2. 109° 29' 73.00 feet along same;
3. 199° 29' 27.00 feet along same;
4. 289° 29' 73.00 feet along remainder of said Presidential Executive Order No. 7503, along the Southwest boundary of said Mokapu Elementary School, to the point of beginning and containing an area of 1,971 square feet.

All as shown on Real Estate Drawing No. RE 83-25 attached hereto as Exhibit "B" and made a part hereof.

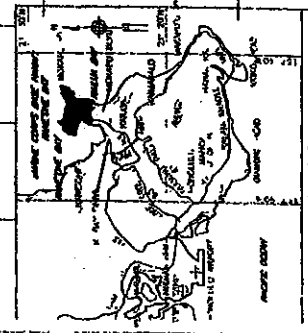


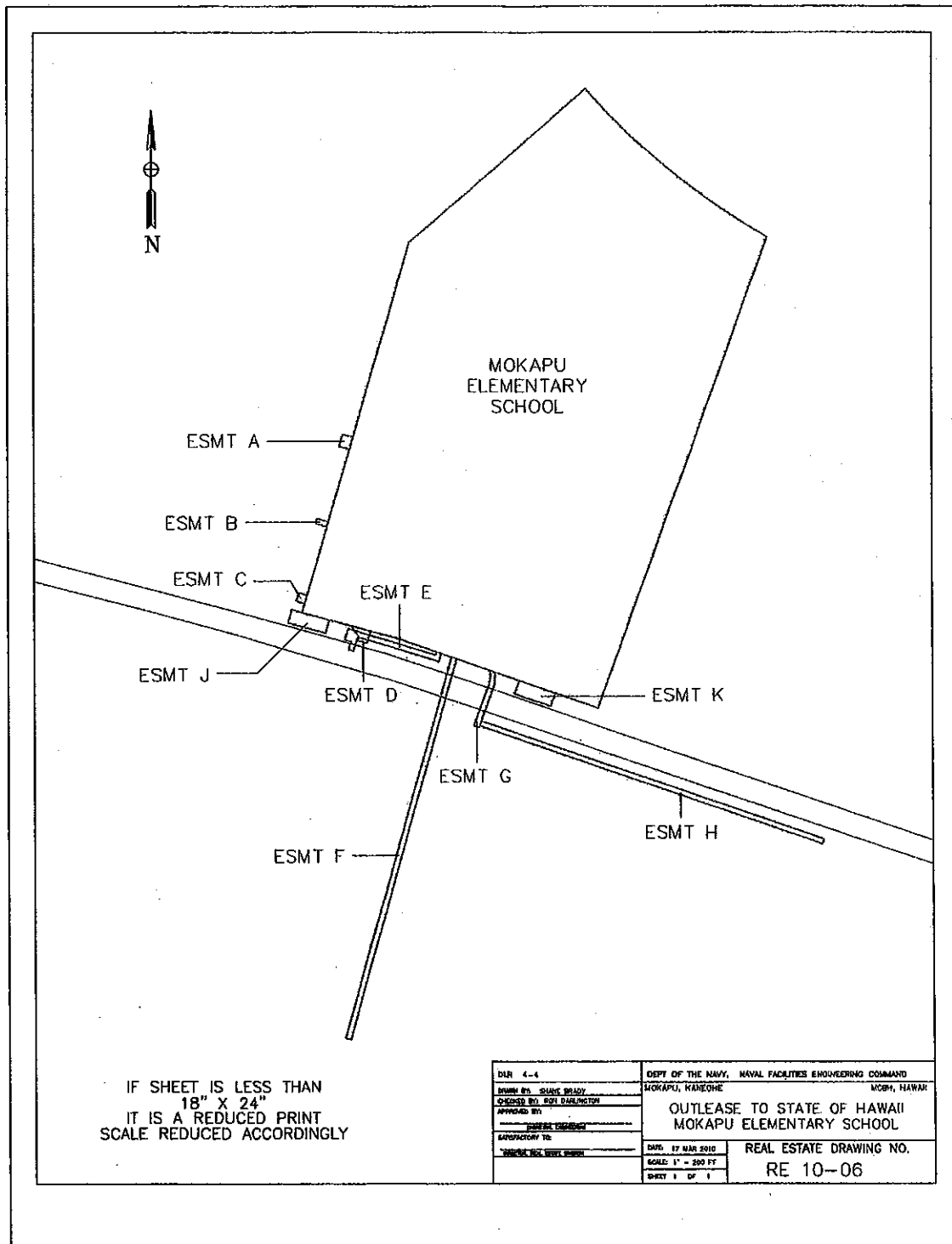
MARINE CORPS BASE HAWAII I.  
KANE'OHE BAY

LOCATION

LOCATION PLAN

MOKAPU ELEMENT. SCHOOL





\*"ESMT" refers to rights-of-way provided in conjunction with lease agreement

27 October 2008

## MEMORANDUM FOR THE RECORD

Subj: ENVIRONMENTAL CONDITION OF PROPERTY (ECP) OPTION 3 FOR LEASE RENEWAL TO STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES FOR MOKAPU ELEMENTARY SCHOOL AT MARINE CORPS BASE HAWAII, KANEOHE, HAWAII

- Ref:
- (a) Initial Assessment Study of Marine Corps Air Station Kaneohe Bay, Hawaii, NEESA 13-036 of Apr 1984.
  - (b) Lead-Based Paint Survey Inspection Test Results for Mokapu Elementary School, EMET Services, Inc. of Mar 1999.
  - (c) 2004 Asbestos Hazard Emergency Response Act (AHERA) Progress Report, Mokapu Elementary School, Kimura International of 24 Oct 2004.
  - (d) Environmental Baseline Survey (EBS) for U.S. Marine Corps Base Hawaii Electrical Distribution System and Wastewater Systems of May 2005.
  - (e) Lead-Based Paint XRF Testing Results for Mokapu Elementary School, EnviroQuest, Inc. of 19 Sep 2006.
  - (f) Marine Corps Base Hawaii Master Plan, Volume 1 – Land Use Plan of 15 Dec 2006.
  - (g) Transformer Oil Spill Results for PCB, Mokapu Elementary School, HAZTECH Environmental Services, Inc. of 16 Apr 2007.
  - (h) Marine Corps Base Hawaii Decision Memorandum on Application of Categorical Exclusion of 14 Jul 2008.
  - (i) ASN (I&E) Memorandum, DON Environmental Policy Memorandum 06-06: Streamlined Environmental Procedures Applicable to Non-BRAC Real Estate Actions of 5 July 2006.

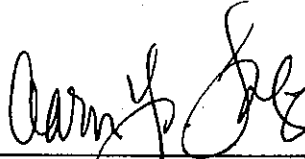
Encl: (1) Department of the Navy General Purpose Lease for Mokapu Elementary School of Feb 1984.

1. By enclosure (1), the State of Hawaii Department of Natural Resources leases approximately 14.235 acres of land, including all supporting utility easements for potable water, electric power, storm water, and wastewater, at Marine Corps Base Hawaii for the operation and maintenance of Mokapu Elementary School. The current lease will expire on 28 February 2009. A succeeding 25-year lease will be issued to the State of Hawaii by the Department of the Navy, on behalf of Marine Corps Base (MCB) Hawaii, to provide for the continued use of the 14.235 acres of land and supporting utility easements for the operation and maintenance of Mokapu Elementary School. See Exhibits "A" and "B" of enclosure (1) for Land Court property descriptions and maps, respectively, of the leased property and supporting utility easements.

2. The original lease of MCB Hawaii property at Kaneohe for the construction, operation, and maintenance of Mokapu Elementary School was issued in 1959 to the City and County of Honolulu. The responsibility for Mokapu Elementary School and the corresponding lease agreement, including all subsequent lease renewals over the past decades with the Navy/MCB Hawaii, was transferred to the State of Hawaii in 1975.
3. The subject real estate action was requested by the State of Hawaii in February 2007 and approved by MCB Hawaii, subject to satisfactory completion of the real estate and environmental documents.
4. The original use of this property by the City and subsequently the State of Hawaii began prior to the requirement to document environmental conditions, and no specific documentation of the environmental condition of the leased property exists. However, visual site inspections (VSI) of the property and supporting easement areas conducted in July and October 2008, interviews with State of Hawaii and MCB Hawaii environmental and facilities personnel, review of documents listed in references (a) through (h), and various email correspondences with State of Hawaii and MCB Hawaii personnel provide no reason to suspect any environmental condition that is inconsistent with granting a succeeding lease under the same terms and conditions as the existing lease.
5. Based on these findings and in accordance with reference (i), it has been determined that no further action must be taken to document the environmental condition of the property or its suitability for the State of Hawaii's continued use of the property/utility easements for the operation and maintenance of Mokapu Elementary School under a proposed succeeding 25-year lease agreement. The risk to the Navy/MCB Hawaii for the continuation of such activities is minimal. No environmental notifications, covenants, and/or restrictions are required for the new lease agreement.



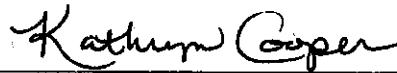
6. Thus, in accordance with reference (i), this Memorandum-for-the-Record (i.e., Environmental Condition of Property Option 3) is provided to support the subject real estate action.



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Aaron Poentis  
Environmental Business Line Coordinator  
NAVFAC Hawaii

The real estate professional acknowledges the satisfactory completion of the Memorandum-for-the-Record supporting the subject real estate action. There are no environmental notifications, covenants, and/or restrictions required for the proposed real estate action.



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Kathryn Cooper  
Real Estate Specialist  
NAVFAC Hawaii

Copy to:  
MCB Hawaii (LE; Attention: Mr. Randall Hu)

## **EXHIBIT F – Hazardous Materials List**

BACTO Disinfectant/Sanitizer  
Ultra White Laundry Detergent  
PROVON Antimicrobial Lotion Soap  
3M (TM) Enzyme Digester  
BETCO Floor Sealer  
BETCO Deep Blue Glass Surface Cleaner  
BETCO Ax It Plus No Rinse Stripper  
BETCO Floor Sealer  
BETCO Stainless Steel Cleaner/Polish  
ABC Neutrale Pacific  
Pure Bright Germicidal Bleach  
Antibacterial Gold Hand Soap  
CITRUS Fresh  
BETCO AF315 Disinfectant/Deodorant/Detergent  
BETCO Furniture Polish  
ABC Fresh Plus  
BETCO Bonbet Liquid Dry Carpet Cleaner  
BETCO Earth Glass Cleaner  
BETCO Best Scent Ocean Breeze  
ACT Sealer  
2 Cycle Easy Mix Engine Oil  
Valspar Medallion 100% Paint  
Clorox